

**SUMMARY MINUTES
DURHAM BOARD OF ADJUSTMENT**

July 25, 2000

The meeting was called to order at 8:30 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

William Brian
James Edney
Louis Goetz
Evelyn Lovett
Corinne Mabry
David Smith
Connia Watson
Kathy Wright-Moore

MEMBERS NOT SEATED

MEMBERS ABSENT

Lavonia Allison
Kate Fulkerson

STAFF PRESENT

Brenda J. Daniel, Clerk, Board of Adjustment
Betty Johnson, Planning Staff
Helen Youngblood, Planning Staff

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Helen Youngblood	Betty Johnson
Gray Styers	Philip Culpepper
Ken Carter	Ann Alifkin
Jim Petrea	Eric Staehle
Phil Kiester	Peter Debert
Jim Jorgensen	

The Chairman asked if there were any conflicts with any of cases. Mr. Goetz noted a conflict with Case B00-22 and asked that an alternate be seated for that case. Chairman Watson seated Ms. Wright-Moore for that case.

The Chairman asked if there were any early dismissals from any Board members. Mr. Goetz noted that he would need to leave by 2 p.m.

HEARING AND DETERMINATION OF CASES

Ms. Youngblood asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chair Watson read the following statement into the record:

This Board is a quasi-judicial Board of record and as such, all testimony will be recorded. I'd like to ask at this point are there any members of this Board that would have any conflicts of interest with regard to the cases that are before us today? Are there any early dismissals at this time?

The proceedings of this Board will be governed by the zoning laws, as recorded.

As Chair of the board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson, Ms. Wright-Moore

Case B00-22 County

A request by American Tower Corporation for a Minor Special Use Permit for a 190' monopole telecommunications tower as per Sections 4A.1.3.20, 7.39 and 13.1 of the Durham Zoning Ordinance. The property is located along Old Hope Valley Road, State Road 1178 and zoned RD (F/J-A). Tax Map 496-5-15

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Ann Slifkin, Philip Culpepper, Gray Styers, Ken Carter

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to grant the request as submitted based on findings of fact by the Board that Sections 4C.2.3.4, 7.39, 9, 10 and 13.1 of the Durham Zoning Ordinance.

Conditions:

1. That a break-a-way gate be installed at the entrance to the main tower site.
2. That the tower location, height, fencing, landscaping, and other design specifications must be consistent with the site plans submitted to the Durham Planning Department as part of the Minor Special Use Permit application and Design Review application and presented as evidence at the Public Hearing (hereinafter "Site Plans").
3. That the maximum height of the tower and appurtenant antennas shall not exceed 195 feet. Neither American Tower nor its successors in interest will, at a later time, seek to increase the tower height.
4. That the tower must be of monopole construction. The exterior of the tower shall be galvanized steel and the tower shall not be painted at any time.
5. That no microwave dishes shall be attached to the tower.

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6. That neither the tower nor its compound shall be lit with any permanent external light. Any external light that may be installed near the base of the tower for nighttime maintenance or security will be either motion activated or manually controlled.
7. That the area immediately around the security fence be built up with an earthen berm raising the elevation to at least 280 feet with at least a 7-foot differential from the ground level inside the compound to the top of the berm as shown on Page Z6 of the Site Plans. The area must be landscaped with a buffer at least 60 feet in width and planted consistent with Landscape Plan shown on Page Z7A of the Site Plans.
8. That no person shall be employed to work on-site at the tower site except as required for construction and for periodic inspection and maintenance thereafter.
9. That no storage yard shall be maintained on or around the leased parcel.
10. That American Tower shall not remove any existing vegetation around the tower except that which is necessary to remove for access to and construction of the facility and landscaping.
11. That American Tower shall dismantle and remove the tower and any and all structures related to its use within six months of such time as the tower is abandoned, becomes obsolete, or for whatever reason is no longer used for a period greater than ninety (90) days.
12. That a gate or chain shall be installed and maintained on the access driveway at the point where it crosses the property line dividing the property of Mr. Theodore Chambers with that of Ms. Virginia Crane.
13. That the tower must be structurally capable of accommodating at least four sets of commercial wireless telecommunications antennas, and American Tower must make co-location available on the tower at reasonable, fair market rental rates.
14. No other telecommunications tower, as that term is defined in the Durham County Ordinances, will be built within 2,500 feet of this tower in the future by American Tower or any successor in interest.
15. That the tower must not be a hazard to air navigation, as determined by Federal Aviation Administration (FAA), and American Tower must obtain all necessary licenses and permits required by the FAA.

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16. That Electromagnetic emissions from the equipment on the tower shall not interfere with consumer electronic equipment and shall at all times be less than the health and safety standards established by the American National Standards Institute (ANSI) as adopted by the Federal Communications Commission (FCC).
17. These conditions shall be a part of the Special Use Permit and shall run with the land and shall be binding upon American Tower and its successors, assigns, tenants, and their officers, directors, employees, and agents.

Seconded By: Mr. Brian

Vote: 6 to 1

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B00-25 City

A request by Circle K Properties, Inc. for a Minor Special Use Permit for a convenience store with gasoline sales as per Sections 4D.1.3.2, 8.1.15, 8.1.23 and 13.1 of the Durham Zoning Ordinance. The property is located at 3801 N. Duke Street and zoned NC (F/J-B). Tax Map 315-1-2B.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Jim Jorgensen, Council for Circle K, Peter Deburt, Design Engineer

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Brian made a motion to grant the request as submitted based on findings of fact by the Board that Sections 4D.1.3.2, 8.1.15, 8.1.23, 9 and 10 of the Durham Zoning Ordinance.

Conditions: 1. That all site plan corrections be made.
2. That the hours of operation be 5 a.m. to midnight, Sunday through Saturday.

Seconded By: Mr. Goetz

Vote: 7 to 0

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B00-27 City

A request by Trinity Avenue Presbyterian Church for a Minor Special Use Permit for a place of worship as per Sections 4A.6.3.9, 7.28, 8.1.15 and 13.1 of the Durham Zoning Ordinance. The property is located at 927 W. Trinity Avenue and zoned R-5. Tax Map 63-4-1, 2.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Jim Petrea, Elder at Trinity Avenue Presbyterian Church; Eric Staehle, Civil Engineer and Landscape Architectural Planning; Phil Kiester

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to grant the request as submitted based on findings of fact by the Board that Sections 4A.1.3, 7.16, 9, 10 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions: That the lighting requirements of the Zoning Ordinance be met.

Seconded By: Ms. Lovett

Vote: 7 to 0

Action: Granted

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Approval of Summary Minutes

The summary minutes of May 23, 2000 and June 27, 2000 were approved on a motion by Mr. Brian, seconded by Ms. Wright-Moore. The motion passed unanimously.

Old Business

None to come before the Board.

New Business

The Board was informed that Ms. Youngblood lost her father recently. The Board wanted to express their sympathy appropriately and asked that all members willing would contribute to the Paul Waldrop Scholarship Fund.

Election of Chairman to the Board

Mr. Brian was unanimously elected as Chairman to the Board.

Election of Vice Chair to the Board

Ms. Mabry was unanimously elected as Vice Chair to the Board.

Annual Report

Mr. Watson noted the draft of the Board's annual report should be presented to the Board at their August meeting.

Denial Orders

The draft denial orders were in need of a few changes, as noted by the Board. The Board asked that the changes be made and the orders be presented back to the Board at their August meeting.

With no further business to come before the Board, the meeting adjourned at approximately 11:20 a.m.

Respectfully submitted,

Brenda J. Daniel, Clerk
Durham Board of Adjustment